



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

February 11, 2005

Mr. Francisco R. Canseco  
Escamilla & Poneck, Inc.  
5219 McPherson, Suite 306  
Laredo, Texas 78041

OR2004-01301

Dear Mr. Canseco:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 218490.

The United Independent School District (the "district"), which you represent, received a request for information pertaining to an alleged assault of a student. You claim that the requested information is excepted from disclosure under sections 552.026, 552.101, 552.108, 552.114, and 552.135 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted information.<sup>2</sup>

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and it encompasses information protected by other statutes. Section 261.201 of the Family Code provides as follows:

The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for

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<sup>1</sup>Although you also assert that the submitted information is excepted under section 552.021 of the Government Code, we note that this section is not an exception to disclosure under the Act, but it instead provides for the public availability of "public information." See Gov't Code § 552.021.

<sup>2</sup>We assume that, to the extent any additional responsive information existed when the district received the request for information, the district has released it to the requestor. If not, then the district must do so immediately. See Gov't Code §§ 552.006, 552.301, 552.302; Open Records Decision No. 664 (2000).

purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201. Because the information in Exhibits C-2, C-3, C-4, and C-5 consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261, the information is within the scope of section 261.201 of the Family Code. You have not indicated that the district has adopted a rule governing the release of this type of information. Therefore, we assume that no such regulation exists. Given that assumption, the information at issue is confidential pursuant to section 261.201 of the Family Code. *See* Open Records Decision No. 440 at 2 (1986) (predecessor statute). Accordingly, the district must withhold the information in Exhibits C-2, C-3, C-4, and C-5 under section 552.101 of the Government Code as information made confidential by law.<sup>3</sup>

Section 552.101 also encompasses federal law. The Family Educational Rights and Privacy Act of 1974 (“FERPA”) provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student’s education records to anyone but certain enumerated federal, state, and local officials and institutions, unless otherwise authorized by the student’s parent. *See* 20 U.S.C. § 1232g(b)(1). “Education records” means those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A). This office generally applies the same analysis under section 552.114 and FERPA. Open Records Decision No. 539 (1990).

Section 552.114 excepts from disclosure student records at an educational institution funded completely or in part by state revenue. Section 552.026 provides as follows:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

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<sup>3</sup>As we are able to resolve this under section 552.101 in conjunction with section 261.201 of the Family Code, we do not address your remaining arguments for exception regarding the information in Exhibits C-2, C-3, C-4, and C-5.

Gov't Code § 552.206. In Open Records Decision No. 634 (1995), this office concluded that (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. However, in this instance, you have asked us to rule on the applicability of sections 552.026 and 552.114.

Information must be withheld from required public disclosure under FERPA only to the extent "reasonable and necessary to avoid personally identifying a particular student." See Open Records Decision Nos. 332 (1982), 206 (1978). Upon review, we conclude that the documents in Exhibits C-6, C-7, and C-8 consist of records maintained by the district that directly relate to a student of the district. Thus, this information constitutes education records for purposes of FERPA. See e.g., *Belanger v. Nashua, New Hampshire School District*, 856 F. Supp. 40, 48-50 (D.N.H. 1994) (broadly construing FERPA definition of "education records"). Further, in this case the request for information reflects that the requestor knows the identity of the student. We therefore find that withholding only the name of this student would not suffice to avoid the release of personally identifiable information contained in student education records as mandated by FERPA. Accordingly, the information in Exhibits C-6, C-7, and C-8 is confidential in its entirety under FERPA.<sup>4</sup> However, the remaining information does not consist of records maintained by the district that directly relate to a student of the district; therefore, none of the remaining information is confidential under FERPA, and the district may not withhold this information under section 552.101 on that ground.

To conclude, pursuant to section 552.101 of the Government Code, the district must withhold (1) the information in Exhibits C-2, C-3, C-4, and C-5 under section 261.201 of the Family Code and (2) the information in Exhibits C-6, C-7, and C-8 under FERPA. The district must release the remaining information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by

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<sup>4</sup>As we are able to resolve this under section 552.101 in conjunction with FERPA, we do not address your other arguments for exception regarding the information in Exhibits C-6, C-7, and C-8.

filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).


If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

  
James V. Coggeshall  
Assistant Attorney General  
Open Records Division

JLC/sdk

Ref: ID# 218490

Enc. Submitted documents

c: Ms. Belinda Ramon Bennett  
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(w/o enclosures)